



OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

August 28, 2002

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2002-4815

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167758.

The Texas Alcoholic Beverage Commission (the "commission") received a request for "all documents concerning violations, suspensions, and civil penalties, including a computer printout showing the history of violations" for two named permit holders. You indicate that the commission has released some responsive information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.103, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note that the submitted information includes information that is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information that you submitted to us for review contains completed reports or investigations, which fall into one of the categories of information made expressly public by section 552.022. *See* Gov't Code section 552.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You contend that section 552.103 of the Government Code makes this information confidential. However, section 552.103 is a discretionary exception to disclosure

that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). However, you also argue that sections 552.101 and 552.130 except a portion of the submitted information from public disclosure. As sections 552.101 and 552.130 are considered confidentiality provisions for the purpose of section 552.022, we will address your arguments under those sections with respect to the records that are subject to section 552.022(a).

You claim that the social security numbers of permittees of the commission are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 56.001 provides:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. You indicate that the highlighted social security numbers concern permittees of the commission. Accordingly, we conclude that the commission must withhold the highlighted social security numbers from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code.

The unmarked social security numbers contained in the records at issue may be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained to any provision of law, enacted on or after October 1, 1990.

You also claim that the highlighted Texas driver's license numbers in the submitted documents are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130.* Accordingly, we conclude that the commission must withhold these highlighted driver's license numbers, as well as those that we have marked, from disclosure pursuant to section 552.130 of the Government Code.

Finally, you claim that section 552.103 excepts from public disclosure the remainder of the submitted information that is not subject to the purview of section 552.022(a). However, as you indicate that the remaining information has already been released to the requestor, we do not address your section 552.103 argument. *See Gov't Code § 552.007* (public information voluntarily disclosed by governmental body must be made available to any person unless information confidential by law).

In summary, the commission must withhold Texas driver's license numbers under section 552.130. The highlighted social security numbers of permittees of the commission must be withheld under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. The unmarked social security numbers may be confidential under federal law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov't Code § 552.301(f).* If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id. § 552.324(b).* In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id. § 552.353(b)(3), (c).* If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id. § 552.321(a).*

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 167758

Enc. Submitted documents

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(w/o enclosures)